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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/688,251

10/17/2003

Robert Kissel

-74445-002

4577

29493 7590 09/27/2007

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ST. LOUIS, MO 63105-3441

EXAMINER

DONNELLY, JEROME W

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

09/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/688,251

Applicant(s)

KISSEL, ROBERT

Examiner

Jerome W. Donnelly

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) \_\_\_\_ is/are pending in the application. 1-38
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_ is/are rejected. 1-9, 11-34 38 and 39
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-7 and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by McNergney et al.

McNergney et al discloses a device comprising: a plurality of resistance providing members (20) having at least three different values of resistance and selectors (36).

In regard to claim 6 note plate (32) of McNergney et al

In regard to claim 6 note plate (32) of McNergney.

As broadly claimed elements (44) are considered as actuators.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 15, 18-22, 25-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Scaramucci.

Scaramucci discloses a device comprising a plurality of resistance providing members (2) disposed horizontally with respect to each other, a selector (4, 12, 13, 18-20) and a controller (electronic).

In specific regarding claims 20-22 note the following:

In regard to claim 22, each of the links of claim 17 is considered as an actuator.

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In regard to claim 20 the selector includes actuators (links 17).

In regard to claim 21 note selector plate (4').

In regard to automatic note col. 1 line (54).

In regard claim 30 and 31, note the availability of a computer/controller which is one of a plurality of computes available and the usage of a sensor associated with the exercise machine. The computer disclosed in the patent of Scaramucci is not the only computer capable of running the system of Scaramucci and therefore the selector is adapted to be controlled by a plurality of different controllers/computers.

Claim 38 is rejected under 35 U.S.C. 102(E) as being anticipated by Ripley.

Ripley discloses a device comprising a plurality of weights, a selector (60), (62) adjacent each of of said weight, said selector including a plurality of actuators (80,82) and a base (120) including a plurality of tapered openings (124, 126).

Claim 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Ripley.

Ripley discloses a device comprising: a set of weights, a first second and third weight, each having a bottom top and sides, the sides having at least some taper.

Ripley fails however to disclose the first second and third weights having a mass approximately twice and or three times the mass of the approximately twice and or three times the mass of the first weight specifically.

The examiner however notes that what is shown by Ripley are weights of different masses (see fig.) but not specifically disclosing the masses of the weight as proportionally claimed and unless the applicant can specifically show why the exact proportions claimed are critical, the examiner must consider the claimed specific

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proportions as arbitrary and non-critical to the patentability of the device and therefore obvious.

Claims 1, 11, 12, 13, 15-17 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaramucci discloses the device of claim 16, 17 and 22-24 substantially as claimed absent the specific weight configurations ratios and values as claimed.

Mabry et al discloses a device having weight plates of variable/various weights. See col. 4, lines 65-68.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in art to provide the device of Scaramucci with weight plates of various sizes as a means of gradually varying the weight resistance of by using various size weight members.

In regard to the device of claim 1, having at least 3 different values the examiner notes that the device of Mabry et al discloses a plurality of values, at least two, the examiner considers at least three as obvious.

Claims 10 and 35-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention. The election requires is being made final.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

